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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-87

GEORGE MIHALOPOULOS, Petitioner,

vs.

IDEAL CEMENT COMPANY, Respondent.

On Petition for a Writ of Certiorari to the
United States Circuit Court of Appeals
for the Ninth Circuit

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

GEORGE MIHALOPOULOS,
A seaman, in propria persona,
250 Kearny Street,
San Francisco, California 94108

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STATEMENT OF THE CASE

The Statement of the case as shown by the respondent is, in general, correct except for the respondent's statement that this action was brought to recover damages for "aggravation of a pre-existing low back condition." Respondent is referring to an injury which I had sustained on October 14, 1966, when I jumped over the side of a towboat to rescue a fellow employee who had had an epileptic seizure and fell overboard and was submerged in the waters of the San Pablo Bay underneath

a dredge. The present action was not brought regarding this injury but for a completely new injury sustained while employed by Ideal Cement Co.

ARGUMENT

The issues in this present case are straightforward and clearcut and no amount of strained semantics or verbal diversion can obscure the fact that there are substantial Constitutional issues involved.

Respondent contends in par. C of his argument in his brief in opposition (p. 4) that "Petitioner here for the first time raises the novel assertion that error was committed by the trial court in not summarizing its previous instructions to the jury on the morning of January 21, 1973 before further jury deliberations."

Contrary to the respondent's contention, the issue was clearly raised in my brief to the appeals court. (P. 11)

Respondent also states that "No rule or statute requires the court, on its own initiative or

otherwise, to review those instructions before each day's deliberations."

If that be the case, the Constitutional Amendments which I have consistently referred to are the applicable and designed rights to fill that void.

Additionally, I'd like to say that in my brief to the appeals court (p. 11), I did make the following observation: "I did not find any other authority to cite, although I have been led to believe that his honor, Chief Judge Carter does follow a practice of assembling the jurors to give them this type of procedure in refreshing the recollection of the jury."

The date given by the respondent is incorrect and should be shown as Jan. 23, 1973.

In par. B (p. 4) of the respondent's brief, the respondent has failed to recognize or else has totally ignored the fact that there are lapses and missing portions from the transcript of the arguments of both counsel.

The parts of the transcript which I ordered from the court reporter were: 1. the voir dire, 2. the arguments of both counsel and 3. the entire proceedings of Jan. 23, 1973; and I still assert and maintain that the transcript dealing with the arguments of counsel is incomplete as received from the court reporter and it did affect the judgment of the appeals court because these missing portions pertained to improper and prejudicial remarks which did in fact affect the verdict of the district court.

At this point I'd like to make the comment that an individual has the assurance and guarantee of freedom of speech through communications, but they are of no value whenthat freedom can be abridged by a failure to recognize or by totally ignoring those communications.

In par. A (p. 3) of the respondent's brief, the respondent tends to speculate that "the jury, once instructed, is thereafter left under the control and supervision of the United States Marshall.

In the reporter's partial trial transcript of the proceedings in the district court of the arguments of counsel, I have, in addition, what I know to be the entire transcript for the rest of the day of Jan. 22, 1973, which begins after the judge's instructions to the jury, and which is comprised of pp. 67, 68 and part of 69 and, in addition, I have the entire transcript of the proceedings of Jan. 23, 1973 which is comprised of pp. 69, 70 and 71. There is no mention or any reference whatsoever made in this transcript of an open trial about any United States Marshall; nor is there any name or reference whatsoever shown in the court record as to any assigned United States Marshall; and there is no assurance that one ever was present other than the assumption of the respondent that he was.

In this instance, if I speculate on the respondent's assumption that there was a Marshall present, this does not diminish the argument that I have asserted in my petition.

CONCLUSION

For the foregoing reasons, petitioner again prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

George Mihalopoulos

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DATED: September 12, 1974